

1 GARY L. FERTIG, ESQ.
State Bar No. 059360
2 1516 Oak Street, Suite 328
Alameda, CA 94501
3 Telephone: (510) 521-1400
Facsimile: (510) 865-0375
4 fertig@fertiglawn.com

5 Attorney for Secured Creditor
SAN FRANCISCO FEDERAL CREDIT UNION
6
7

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 IN RE:) CASE NO. 12-32811
12)
12 DAVID ROGER GAUDRY) Chapter 13
13)
13 Debtor,) OBJECTION TO CONFIRMATION OF
14) CHAPTER 13 PLAN BY SECURED
CREDITOR SAN FRANCISCO
FEDERAL CREDIT UNION

15 Continued Meeting of Creditors: 12/27/2012
16 Time: 1:00 p.m.
17 Place: Office of U.S. Trustee
235 Pine Street, Suite 850, San Francisco, CA

18 Confirmation Hearing Date: TBA
19

20 Secured Creditor, SAN FRANCISCO FEDERAL CREDIT UNION (“Secured
21 Creditor”), objects to confirmation of the Debtor’s proposed Chapter 13 Plan on the following
22 grounds:

23 1. Secured Creditor provided the Debtor with purchase money financing on the
24 following described motor vehicle and has duly perfected its security interest in the vehicles
25 by registering with the Department of Motor Vehicles as lienholder:

- 26 a. 2002 Honda S-2000;
27 b. 2005 Toyota Sienna.

28 ///

2. The Debtor has correctly scheduled Secured Creditor as the holder of the purchase money security interest in both vehicles on Schedule D.

3. Secured Creditor has filed separate Proofs of Claim relating to each secured vehicle noted in the Claims Register as Claims Numbers 6 and 7 (note: Secured Creditor filed an Amended Proof of Claim Number 7). As reflected on Secured Creditor's Proofs of Claim, the interest rate on each secured motor vehicle loan is 5.99%.

4. The Debtor's proposed Plan at Section 4(A) proposes the nominal interest rate on each secured claim in the amount of 3.00%.

5. Secured Creditor objects to confirmation of the Chapter 13 Plan on the grounds that the propose interest rate of 3.00% per annum on the secured claims is not adequate for purposes of the provisions of 11 U.S.C. §1325(a)(5)(B)(iii)(II). The U.S. Supreme Court in the matter of Till v. SCS Credit Corporation 124 S.Ct. 1951 (2004), held that the appropriate interest rate is determined by the "formula approach". The formula approach requires the Bankruptcy Court to use the National Prime Rate as the starting point for interest on a consumer secured claim and then adjust the Prime Rate to account for the Debtors' greater risk of non-payment than a solvent commercial borrower. In addition to the default risk imposed by the Debtors, the Court may consider evidence about the "liquidity of the collateral market." It is respectfully submitted that in the case where a consumer motor vehicle is pledged as collateral, the Court may take judicial notice of the fact that the vehicle depreciates on a monthly basis from the mere passage of time in addition to use, wear and tear.

6. The National Prime Rate in effect when the Debtor filed his Chapter 13 Petition in this matter was 3.25% per annum as reported by the Federal Reserve Bank internet site (www.federalreserve.gov). Utilizing the formula approach of the Till case, Secured Creditor respectfully suggests that 6.25% per annum is a reasonable rate of interest when the Court takes into consideration the character of the rapidly depreciating vehicle collateral and the risk of default coupled by the period of time that the Debtor propose to pay on the secured claims.

///

///

1 Wherefore, Secured Creditor respectfully requests that the Court deny confirmation of
2 the Chapter 13 Plan; or in the alternative, condition confirmation on an interest rate of 6.25%
3 per annum on both of Secured Creditor's Proofs of Secured Claims.

4
5 Dated: December 20, 2012

Respectfully submitted,

6 /s/ Gary L. Fertig #059360
7 GARY L. FERTIG, Attorney for
8 Secured Creditor San Francisco Federal
9 Credit Union
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28